IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPLICATION NO.146 OF 1999.

The Commissioner of Income Tax ..Applicant

Vs.

Rajkumar S.Anand ..Respondent

Mr.Ashok Kotangale, A.G.P. with Mr.P.S.Sahadevan for the Applicant.
Mr.F.V.Irani with A.K.Jasani for the Respondent.

CORAM :- DR.S.RADHAKRISHNAN & V.C.DAGA, JJ.

DATE : 16TH APRIL, 2007

P.C.

1. Heard the learned Counsel for the parties. By the present Application, the Applicant is seeking a reference on the following substantial questions of law:

> 1. "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to deduction on account of incentives from the gross amount of commission and thereby directing the Assessing Officer to allow deduction of 1/6th of the gross amount of commission without appreciating the following facts:
>
> i) The assessee's claim is not supported by any evidence or material on record.
>
> ii) The assessee's claim is contrary to the evidence available on record which shows that the assessee has not incurred any such expenditure.
>
> 2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to deductions for estimated expenses out of the

income from commission and thereby directing the Assessing Officer to allow an estimated deduction of 20% without appreciating that the assessee's claim is based on extraneous facts such as the deduction admissible in the case of L.I.C. Commission etc., and is contrary to the evidence available on record which shows that no such expenditure has been incurred by the assessee?"

3. "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to deduction for an amount of Rs.56,51,000/- on account of bad debts as against the sum of Rs.56,510/- allowed by the Assessing Officer, when the assessee has failed to furnish even the minimum details of the amount which is claimed to have become bad?"

4. "Whether on the facts and in the circumstances of the case, the Tribunal was right in deleting the addition of Rs.14,09,500/- made by the Assessing Officer on account of the amount receivable by the assessee from Mr.Behram Hemchand without appreciating the evidence brought on record by the Assessing Officer which shows that this amount represents the income assessable in the hands of the assessee?"

5. "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in deleting the addition of Rs.5,35,000/- made by the Assessing Officer on account of the balance in the capital account of the assessee's minor son, Master Nishank Raj Anand, without considering the fact that the assessee's explanation is convincing and is not supported by any valid evidence?"

2. We have perused the order passed by the Tribunal. As far as question Nos.1,2, and 4 are concerned, they are all findings of facts and the same was admitted by the learned Representative of the Department. Even otherwise, in view of the judgment of our High Court in the case of **Commissioner of Income-Tax (Central) Vs. Piramal Spinning and Weaving Mills Ltd. 124 ITR 408**, the above questions will not be substantial questions of law and as far as question

No.3 is concerned, the Tribunal has decided in favour of the Assessee as under:

> 12. The Tribunal gave the benefit of two zeros in respect of this deduction consistent with its finding in respect of the code adopted by the assessee for recording the figures and also held that a receivable cannot be treated as an item of income. The question proposed by the Revenue alleges that the Tribunal has not appreciated the evidence brought on record. We find this allegation is quite contrary to the findings of the Tribunal and we accordingly find that no question of law arises from the order of the Tribunal in this regard.

3. We do not find any question of law arises out of the same, since the Applicant is unable to point out that the business carried out by the Applicant is prohibited by law.

4. As far as the fifth question of law in respect of the minor Assessee is concerned, the Revenue had already accepted the assessment order in favour of the minor and the same now cannot be raised as a question of law. In view of the above, the Application is devoid of merits. Hence, the same stands dismissed.

(V.C.DAGA,J.) **(DR.S.RADHAKRISHNAN,J.)**